

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:96-CR-51-BO-3

DEMETRIUS LAMONT MCCULLERS,	)	
Petitioner,	)	
	)	
v.	)	<u>O R D E R</u>
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

This matter is before the Court on Petitioner's Motion for Reconsideration [DE 192] and Motion to Nunc Pro Tunc [DE 196]. By a written Notice and Order filed July 6, 2011, this Court informed the Petitioner that it intended to re-characterize and construe Petitioner's pending motions collectively as a Motion to Vacate, Set Aside or Correct a Sentence pursuant to 28 U.S.C. § 2255 [DE 197]. The Court allowed the Petitioner thirty days to confirm or deny his intent to file a section 2255 motion, and further advised the Petitioner of the effects and requirements of filing a section 2255 motion.

Petitioner filed a Response dated July 13, 2011 [DE 198]. In the Response, Petitioner writes that he "is not seeking to file a Motion under 28 U.S.C. § 2255 to open [sic] and collaterally attack his sentence by attacking his designation as a "career offender." (Pet.'s Resp. 1) [DE 198]. Rather, the Petitioner wants to "make it clear to the Court that he only [intends] to file a Motion to receive his (2) level reduction" pursuant to the retroactive application of the amended sentencing guidelines. (Id.)

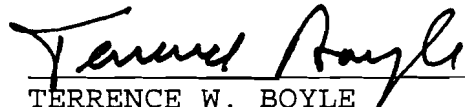
Petitioner's request for a two-level reduction through retroactive application of the sentencing guidelines has already been considered and denied by this Court [DE 181]. Moreover, Petitioner failed to prosecute an appeal of that denial in the United States Court of Appeals for the Fourth Circuit [DE 186]. In the present posture, there is no basis for this Court to revisit its prior Order denying Petitioner's request for a two-level sentence reduction.

Based on the foregoing, it is hereby **ORDERED, ADJUDGED, and DECREED** that the Court construes Petitioner's Motion for Reconsideration [DE 192] and Motion to Nunc Pro Tunc [DE 196] collectively as a motion for reconsideration of the Court's June 2, 2009 Order denying Petitioner's Motion to Reduce Sentence [DE 181].

**IT IS FURTHER ORDERED** that Petitioner's Motion for Reconsideration [DE 192, 196] is **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that the Government's Motion to Dismiss [DE 194] is **DENIED AS MOOT**.

**SO ORDERED**, this the 17 day of August, 2011.

  
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TERRENCE W. BOYLE  
UNITED STATES DISTRICT JUDGE